Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1010

THE CITY OF MOUNTAIN VIEW, GEORGIA; KEITH HURLEY, JIM HARRISON, EDDIE McCLOUDY, H. C. BIDDY, in their official capacities as Councilmen for the City of Mountain View, Georgia; ANNETTE KING, in her official capacity as Mayor of the City of Mountain View, Georgia; WESLEY R. ASINOF, in his official capacity as Judge, Recorder's Court, City of Mountain View, Georgia; JUNE WILLIAMS, in her official capacity of Clerk for the City of Mountain View, Georgia; WILLIAM B. SMITH, in his official capacity as Chief of Police of the City of Mountain View, Georgia; and HOWARD HILLIARD, individually and as a citizen and voter of the City of Mountain View, Georgia,

Appellants,

versus

CLAYTON COUNTY, GEORGIA; J. CHARLES GRISWELL, in his official capacity as Chairman, Board of Commissioners of Clayton County, Georgia; LOREN B. CHEAVES, ED P. ECHOLS, GERRY ADAMS, and ANNIE RUTH FORD, in their respective official capacities as Members of the Board of Commissioners of Clayton County, Georgia; HOWARD SMITH, in his official capacity as Chief of Police, Clayton County Police Department; ROBERT A. DEYTON, in his official capacity as Sheriff of Clayton County, Georgia; and ARTHUR BOLTON, in his official capacity as Attorney General of the State of Georgia,

Appellees.

APPEAL FROM THE SUPREME COURT OF GEORGIA

MOTION TO DISMISS OR IN THE ALTERNATIVE TO AFFIRM

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Now come Appellees, Clayton County, Georgia, J. Charles Griswell, Loren B. Cheaves, Ed P. Echols, Gerry Adams, Annie Ruth Ford, Howard Smith and Robert A. Deyton, and through their attorneys, move this Court pursuant to Rule 16 of the Rules of the Supreme Court of the United States, to dismiss the above styled action as there exists no substantial federal question, or in the alternative, to affirm the decision of the Supreme Court of the State of Georgia, as such rests on adequate state grounds.

BRIEF IN SUPPORT OF MOTION TO DISMISS OR IN THE ALTERNATIVE TO AFFIRM

STATEMENT OF THE CASE

On January 20, 1978, the Governor of the State of Georgia, signed into law a local act, No. 757 of the Georgia Legislature repealing the city charter of a Georgia municipality known as the City of Mountain View. Said act was submitted to the Justice Department of the United States for approval pursuant to the Voting Rights act of 1964. Appellants, certain city officials and municipal licenseholders instituted lawsuits in the Superior Court of Clayton County, Georgia, claiming that such an act violated, among other issues raised, the State and Federal Constitutions, prohibiting the impairment of the obligation of contract.

Named as defendants in the suit were various officials of the County and the Attorney-General of the State of Georgia.

On February 28, 1978, a hearing was held in the Superior Court and the constitutionality of the Act was

upheld. Thereafter, the plaintiffs (now appellants) appealed to the Supreme Court of Georgia.

On September 6, 1978, the Court unanimously upheld the constitutionality of the act and specifically held that the repeal of a municipal charter in Georgia does not operate to impair the obligation of contracts claimed under by the appellants in the action in violation of the State and Federal Constitution.

I.

THIS APPEAL PRESENTS NO SUBSTANTIAL FEDERAL QUESTION AS THE REPEAL OF A MUNICIPAL CHARTER IS NOT AN IMPAIRMENT OF THE OBLIGATION OF CONTRACT.

Motions to dismiss are proper before this Court when there is lack of substance in the federal question raised. *Bodkin v. Edwards*, 255 U.S. 221, 65 L. Ed. 595, 41 S. Ct. 268, *Pearson v. Dodd*, 429 U.S. 396, 50 L. Ed. 2d. 574, 97 S. Ct. 581. Appellees contend that no substantial federal question is presented by this appeal and it should therefore, be dismissed.

This Court has long adhered to the proposition that the creation of a municipality by a state is a purely political act and no constitutionally protected contractual obligation arises between the state and the municipality as a result of their relationship. *Dartmouth College Case*, (U.S.) 4 Wheat 518, 4 L. Ed. 629; *Laramie County v. Albany County*, 92 U.S. 307, 23 L. Ed. 552; *Mt. Pleasant v. Beckwith*, 100 U.S. 514, 25 L. Ed. 699; *Kelley v. Pittsburgh*, 104 U.S. 78, 26 L. Ed. 658; *Hunter v. Pittsburgh*, 207 U.S. 161, 52 L. Ed. 151, 288 S. Ct. 40; *Pawhuska v. Pawhuska Oil & Gas Co.*, 250 U.S. 394, 63 L. Ed. 1054,

39 S. Ct. 526; *Trenton v. New Jersey*, 262 U.S. 182, 67 L. Ed. 937, 43 S. Ct. 534, 29 ALR 1471.

The only inroads on this basic theory are cases where a state legislature has attempted to deny racial minorities the right to vote (*Gomillion v. Lightfoot*, 364 U.S. 339, 5 L. Ed. 2d. 110, 81 S. Ct. 125) or where the state has attempted to discharge debts or obligations of a municipality by dissolving it (*Graham v. Folsom*, 200 U.S. 248, 50 L. Ed. 464, 26 S. Ct. 245). In the present controversy these issues are not present as no claim of racial discrimination has been raised and no claims by potential creditors have been raised in the case.

However, appellants claim that the revoking of a municipal charter without the permission of the "Registered and Qualified voters residing in said city limits" violated the contract clause of the United States Constitution. This claim may be answered, by stating what this Court said, speaking through Mr. Justice Murphy, in *Hunter v. Pittsburgh, Supra*, 207 U.S. at 178, 179:

> The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. Neither their charters nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes . . . constitutes a contract with the state within the meaning of the Federal Constitution. The state therefore, at its pleasure may . . . repeal the charter, and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest.

Therefore, there is no substantial federal question raised by appellants and the appeal should be dismissed.

II.

THE ISSUES PRESENTED THIS COURT BY APPELLANTS WERE DECIDED ON ADEQUATE STATE GROUNDS AND THE DECISION OF THE SUPREME COURT OF GEORGIA SHOULD THEREFORE BE AFFIRMED.

Motions to affirm are proper before this Court when there is no substantial question presented and the decision rests on adequate state grounds. *Pennsylvania Co. v. Donat*, 239 U.S. 50, 60 L. Ed. 139, 36 S. Ct. 4; *Chicago, R. I. & P. R. Co. v. Devine*, 239 U.S. 52, 60 L. Ed. 140, 36 S. Ct. 27.

Appellants claim that a state constitutional provision (Ga. Const., Art. III, Sec. III, Par. IX, Ga. Code Ann., §2-1309) prohibiting the abolishment of elective offices during their term created a contract between the people of the state and their local municipal officials. This claim is frivolous in that, the Supreme Court of Georgia, interpeted this provision as preventing the legislature through local legislation from amending or abolishing the term of a specified elective office to remove an incumbent or prolong his tenure. (See Appellants Jurisdictional Statement, pg. 5a). There is no contractual question raised under the Federal Constitution.

As the question raised is solely a state question requiring the construction of the State Constitution as to the forms to be followed in the state legislature, and this question does not require the construction of the Federal Constitution, it necessarily follows that the decision of the Supreme Court of Georgia should be conclusive, and should be followed by this Court.

Wherefore, the decision of the Supreme Court of Georgia should be affirmed.

III.

CONCLUSION

Appellants have raised no substantial federal questions and decisions of this Court clearly foreclose any further argument on the questions involved with the repeal of a municipality. Appellees, therefore, respectfully request that their Motion to Dismiss or in the Alternative to Affirm be granted by this Court.

Respectully submitted,

Attorneys for Appellees

JOHN R. MCCANNON

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motion to affirm

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MOTION OF APPELLEE ARTHUR K. BOLTON, ATTORNEY GENERAL OF THE STATE OF GEORGIA, TO AFFIRM

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On Appeal From The Supreme Court Of Georgia

MOTION OF APPELLEE ARTHUR K. BOLTON, ATTORNEY GENERAL OF THE STATE OF GEORGIA, TO AFFIRM

Appellee Arthur K. Bolton, Attorney General of the State of Georgia, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, moves this Court to affirm the decision of the Supreme Court of Georgia on the ground that it is manifest that the question on which the decision of the cause depends is so insubstantial and the decision below is so obviously correct as not to need further argument.

QUESTION PRESENTED

The appellants have set forth two questions in their jurisdictional statement. This appellee submits that both of these questions are contained in the following question:

> Whether the abolition of municipal offices by virtue of the repeal by the General Assembly of Georgia of the charter of a municipality violates the Contract Clause of the United States Constitution as to the appellant municipal officeholders.

CONSTITUTIONAL PROVISION INVOLVED

Article I, Section 10, Paragraph I

No State shall . . . pass any . . . Law impairing the Obligation of Contracts. . . .

ARGUMENT

I. THE RELATIONSHIP BETWEEN THE APPELLANT OFFICEHOLDERS AND THE MUNICIPALITY IS NOT CONTRACTUAL.

As a preliminary matter, the appellants' claim requires a determination of whether the repeal by the General Assembly of Georgia of the charter of the City of Mountain View has the effect of impairing a contractual obligation. *See United States Trust Co. v. New Jersey*, 431 U.S. 1, 17 (1977). In other words, is the relationship between the appellant officeholders and the City of Mountain View contractual in nature?

As long ago as 1850, this Court provided an answer to the question in *Butler v. Pennsylvania*, 10 How. 401 (1850). In that case, this Court unequivocally held that no obligation protected by the Contract Clause existed between the State of Pennsylvania and the appellant canal commissioners whose manner of appointment and compensation had been altered during their terms of office by

an act of the state legislature. The Court's language in *Butler* is dispositive here:

> "The selection of officers, who are nothing more than agents for the effectuating of . . . public purposes, is [a] matter of public convenience or necessity, and so too are the periods for the appointment of such agents; but neither the one nor the other of these arrangements can constitute any obligation to continue such agents, or to reappoint them, after the measures which brought them into being shall have been found useless, shall have been fulfilled, or shall have been abrogated as even detrimental to the well-being of the public." *Id.* at 417. [Bracketed matter added]

Once the General Assembly of Georgia repealed the charter of the City of Mountain View, over which it had virtual absolute control, *Trenton v. New Jersey*, 262 U.S. 182 (1923); *Hunter v. Pittsburgh*, 207 U.S. 161 (1907),[1] the offices of the appellant officeholders, as the municipality itself, ceased to exist. Upholding the appellants' claim would have the effect of precluding the exercise by the General Assembly of one of its most important powers—the creation and abolition of municipalities in the State of Georgia—an essential attribute of State sovereignty. *See Gomillion v. Lightfoot*, 364 U.S. 339 (1960).[2] The holdings of this Court interpreting the reach of the Contract Clause do not require the surrender by a state of such an essential attribute of its sovereignty. *See United States Trust Co. v. New Jersey, supra* at 23.

Turning to State law, the power of the General Assembly of Georgia to abolish municipalities is well established. *Troup County Electric Membership Corp. v. Ga. Power Co.*,

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[1] *See also Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

[2] "We [the Court] freely recognize the breadth and importance of this aspect of the State's political power." *Id.* at 342.

229 Ga. 348, 191 S.E. 2d 33 (1972).[3] Similarly, the power of the General Assembly to abolish offices which it creates, such as those of the appellant officeholders,[4] is well established. In *Collins v. Russell*, 107 Ga. 423, 33 S.E. 444 (1899), the Supreme Court of Georgia, citing *Butler v. Pennsylvania*, *supra*, held:

> "There can be no question about the proposition that the legislative power of the State is absolute with respect to all offices that it creates, where no constitutional restriction is placed upon its power with reference to such offices. The incumbent of such an office does not hold the same by virtue of any sort of contract, express or implied, with the State or its lawmaking powers, which gives him a vested right in the office. He accepts the office subject to the control of it by any legislative action and reference thereto which might thereafter be taken. The legislature may abolish the office before his term expires. . . ." *Id.* at 426, 33 S.E. 445.

The principle enunciated by the Supreme Court of Georgia in *Collins v. Russell*, *supra*, aligns precisely with that set forth by this Court in *Butler v. Pennsylvania*, *supra*, and is not merely a matter of historical note in the State of Georgia. *See Smith v. Abercrombie*, 235 Ga. 741, 749, 221 S.E. 2d 802, 808 (1975).

[3] ". . . [M]unicipalities are creatures of the legislature, and their existence may be established, altered, enlarged or diminished, or utterly abolished by the legislature." *Troup County Electric Membership Corp. v. Ga. Power Co.*, *supra* at 352, 191 S.E. 2d at 37.

[4] The offices of the appellant Mayor and City Councilmen were created directly by the General Assembly of Georgia by enactment of Ga. Laws 1956, p. 2518 (Appendix "D" of Jurisdictional Statement). The offices of the appellant Judge of the Recorder's Court, City Clerk and Chief of Police were created by an ordinance (Appendix "D(1)" of Jursidictional Statement) amending the city charter. The ordinance was enacted on September 12, 1977, by the Mayor and Council as authorized by the Municipal Home Rule Act of 1965 [Ga. Laws 1965, p. 298, as amended (Ga. Code Ann. § 69-1015, *et seq.*, in particular Ga. Code Ann. § 69-1017(b)(1)].

Nevertheless, the appellants have possibly confused the question presented by this appeal by reciting as a part of their view of such question their wholly unfounded legal conclusion that the Constitution of the State of Georgia [5] guarantees that their offices may not be abolished without a referendum. The appellants' faulty conclusion is purportedly based upon language in the Georgia Constitution which provides, in pertinent part, that:

> "No office to which a person has been elected shall be abolished, nor the term of the office shortened or lengthened by local or special bill [6] during the term for which such person was elected unless the same be approved by the people of the jurisdiction affected in a referendum on the question." Ga. Code Ann. § 2-1309.

The Supreme Court of Georgia held in this case that as a matter of State law the quoted State constitutional provision has no applicability to the abolition of offices incidental to the repeal of a municipality's charter. *City of Mountain View v. Clayton County*, 242 Ga. 163, 166, ___ S.E. 2d ___ (1978). Furthermore, as such holding is strictly a matter of State law, the appellants are unable in this Court to challenge such holding. *Henry v. Mississippi*, 379 U.S. 443, 446-7 (1965); *Murdock v. City of Memphis*, 20 Wall. 590 (1874). Thus, the quoted State constitutional provision is irrelevant to the appellants' claim.

The fact of the matter is simply that the appellants have presented to this Court nothing other than the question of whether a state legislature may repeal a municipal charter with the incidental effect of abolishing the offices

[5] Georgia Constitution Art. III, Sec. VII, Par. IX (Ga. Code Ann. § 2-1309).

[6] The statute challenged here, Act No. 757 (Ga. Laws 1978, p. 3003), is a local bill (Appendix "B" of Jurisdictional Statement).

of the appellant municipal officeholders. The Supreme Court of Georgia has held that State law is no impediment to such abolition, *City of Mountain View v. Clayton County*, *supra*, and this Court has squarely held that such abolition is not barred by the Contract Clause as no contract exists. *Butler v. Pennsylvania*, *supra*.

With no contractual relationship existing between the appellant officeholders and the City of Mountain View, the appellants' claim, grounded as it is on the Contract Clause, is clearly insubstantial.

II. IF A CONTRACT EXISTS BETWEEN THE APPELLANT OFFICEHOLDERS AND THE MUNICIPALITY, TERMINATION OF SUCH CONTRACT BY ABOLISHING THE MUNICIPALITY DOES NOT VIOLATE THE CONTRACT CLAUSE.

Even if a contract were to be found to exist between the appellant officeholders and the City of Mountain View, it is clear that the laws which existed at the inception of the contractual relationship form a part of the contract as if such laws were expressly referred to or incorporated into its terms. *Van Hoffman v. City of Quincy*, 4 Wall. 535, 550 (1866).

Long before the creation of Mountain View by the General Assembly of Georgia in 1956, the law of Georgia was well settled as to rights *vel non* of incumbents to their offices. Over one hundred years ago, the Supreme Court of Georgia, in *City Council of Augusta v. Sweeney*, 44 Ga. 463, 9 Am.R. 172 (1870), stated that:

> "The right of an incumbent to an office does not depend on any contract, in the sense of a contract, in the sense of a bargain between him and the public. His right depends on the law, under which he holds. If that law be one capable of being repealed by the power which acts, the right of the officer is gone." *Id.* at 466, 9 Am.R. at 174.

It cannot be denied, therefore, that the appellant officeholders began performance of the duties of their offices with the law governing their relationship with the municipality clear to the effect that such relationship was terminable by the authority which had at first enacted the municipal charter under which their offices were directly or indirectly created. It thus follows that the appellants cannot now invoke the Contract Clause to prevent exercise by the State legislature of one of the conditions to that relationship, whatever its nature. That condition was merely that the charter of the municipality might be repealed.

CONCLUSION

No contractual relationship exists between the appellant officeholders and the City of Mountain View, the charter of which was repealed by the challenged Act. Thus, the challenged Act cannot be said to have violated the Contract Clause of the United States Constitution. Furthermore, even if a contract were to exist, its terms most certainly must be said to have included, as a condition to the continued existence of that contract, the potential for repeal of the charter of the municipality with the incidental effect of abolishing the offices of the appellants.

Therefore, this appellee submits that the question presented by the appellants is insubstantial and that the decision by the Supreme Court of Georgia is obviously

correct. Consequently, this motion to affirm should be granted.

Respectfully submitted,

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